

APPEAL NO. 041028  
FILED JUNE 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 26, 2004. The hearing officer determined that although respondent 1 (claimant) was not eligible for supplemental income benefits (SIBs) for the third quarter, the claimant was entitled to SIBs for the third quarter because the appellant (carrier) failed to timely request a benefit review conference. On April 12, 2004, the hearing officer entered an order awarding attorney's fees in the amount of \$2,550 to respondent 2 (claimant attorney).

The carrier appeals, contending that it had already agreed to pay the third quarter SIBs pursuant to a Benefit Dispute Agreement [BDA] (TWCC-24) and that the claimant's attorney had sought to rescind the agreement in order "to increase the costs to the Carrier." The file does not contain a response from either the claimant's attorney or the claimant.

DECISION

The hearing officer's order is affirmed.

Attached to the carrier's appeal is a TWCC-24, which was not admitted in evidence, wherein the parties agreed that the claimant was entitled to SIBs for the third quarter but was not entitled to SIBs for the fourth quarter. The TWCC-24 reflects that it was signed by the claimant (on December 11, 2003), by the claimant's attorney (on December 9, 2003), and by the carrier's representative (on December 15, 2003). The TWCC-24 does not appear to be signed by a Texas Workers' Compensation Commission employee. The case proceeded to a CCH which was convened on March 26, 2004.

At the CCH the claimant sought to have the TWCC-24 admitted and objected to "moving forward of this [CCH] on the basis that a [BDA] had been entered by the claimant and the carrier." The carrier opposed the admission of the TWCC-24 "since that is a settlement document, and generally those are not admissible in a settlement document [sic]."<sup>1</sup> The carrier also objected "to talking about the BDA."<sup>2</sup> The hearing officer sustained the carrier's objection, the TWCC-24 was excluded and further reference to the TWCC-24 was objected to.<sup>3</sup>

The record reflects that it was the carrier that blocked the admission of the TWCC-24 and in essence sought to negate it. The carrier's action required the

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<sup>1</sup> Page 9 of the transcript.

<sup>2</sup> Page 10 of the transcript.

<sup>3</sup> Page 44 of the transcript.

claimant, and the claimant's attorney, to proceed to the CCH. We consider the carrier's representations on appeal totally unfounded and unsupported by the record.

The hearing officer's order awarding attorney's fees to the claimant's attorney to be paid in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)), is affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251-2237.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Panel  
Manager/Judge

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Robert W. Potts  
Appeals Judge